

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Wassim Abedrabbo	Team: Squad #12	CCRB Case #: 201608037	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 09/18/2016 8:30 AM	Location of Incident: § 87(2)(b)	Precinct: 32	18 Mo. SOL 3/18/2018	EO SOL 3/18/2018	
Date/Time CV Reported Sun, 09/18/2016 4:26 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sun, 09/18/2016 4:26 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. Officers			WARRSEC
2. SGT Brian Farrell	01056	925260	WARRSEC
3. An officer			WARRSEC
4. POM James Quirk	20048	951100	WARRSEC
5. DT3 Matthew Murphy	03752	930804	DBMS

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DT3 Antoyne Chess	00162	938218	WARRSEC
2. DT3 Corey Gresko	1660	932745	WARRSEC

Officer(s)	Allegation	Investigator Recommendation
A.SGT Brian Farrell	Abuse: Sergeant Brian Farrell entered and searched § 87(2)(b) in Manhattan.	
B.SGT Brian Farrell	Abuse: Sergeant Brian Farrell interfered with § 87(2)(b)'s use of a recording device.	
C.DT3 Matthew Murphy	Abuse: Detective Matthew Murphy searched § 87(2)(b)'s recording device.	
D. An officer	Abuse: An officer threatened § 87(2)(b) with the use of force.	
E.POM James Quirk	Abuse: Police Officer James Quirk questioned § 87(2)(b)	
F.POM James Quirk	Abuse: Police Officer James Quirk threatened to arrest § 87(2)(b)	
G. Officers	Abuse: Officers damaged § 87(2)(b)'s property.	
§ 87(2)(b)	§ 87(4-b), § 87(2)(g)	

### Case Summary

On September 18, 2016, § 87(2)(b) filed this complaint on behalf of § 87(2)(b) and § 87(2)(b) via the CCRB's on-line complaint system.

On September 18, 2016, at approximately 8:30 a.m., Sergeant Brian Farrell, Detective Corey Gresko, and Police Officer James Quirk of the Manhattan Warrant Section and Detective Matthew Murphy of Detective Bureau Manhattan South went to § 87(2)(b) § 87(2)(b) in Manhattan, to investigate an arrest warrant and a bench warrant for § 87(2)(b) (Board Review 20). § 87(2)(b) owns the apartment, but at that time § 87(2)(b) was home alone. § 87(2)(b) informed the officers that he did not know where § 87(2)(b) his brother, was. He then requested to see the arrest warrant. When Sgt. Farrell told § 87(2)(b) that he could not see the arrest warrant at that time (see third to last paragraph below), § 87(2)(b) closed and locked the door on the officers.

Sgt. Farrell commanded § 87(2)(b) to open the door of the apartment. Sgt. Farrell told § 87(2)(b) that he had "10 seconds" to open the door of the apartment before he knocked the door down (see Allegations not pled section below). § 87(2)(b) called his mother, § 87(2)(b) via FaceTime and informed her that officers were at the door and that they were threatening to break the door down. § 87(2)(b) then instructed § 87(2)(b) to open the door.

When § 87(2)(b) opened the door, Sgt. Farrell entered the apartment (**Allegation A**) with the aforementioned officers. Sgt. Farrell, who entered first, allegedly said, "Stop the recording. He is filming. Cut the phone off"; however, § 87(2)(b) was not recording, he was on a FaceTime call with his mother (**Allegation B**). PO Quirk pulled § 87(2)(b) into the kitchen of the apartment and he allegedly placed § 87(2)(b) in handcuffs. As PO Quirk was handcuffing § 87(2)(b) Det. Murphy allegedly powered § 87(2)(b)'s phone off (**Allegation C**). An officer stood at the entrance of the kitchen and allegedly said, "This is why we have guns, next time I will shoot" (**Allegation D**).

Sgt. Farrell and Det. Gresko continued into the back of the apartment to conduct a search. While the search was conducted, § 87(2)(b) was kept in the kitchen with PO Quirk and Det. Murphy. PO Quirk asked § 87(2)(b) if anyone in the home was on probation or parole (**Allegation E**). § 87(2)(b) informed him that he was on probation. Later, PO Quirk asked § 87(2)(b) where § 87(2)(b) was; after § 87(2)(b) told PO Quirk that he did not know, PO Quirk said, "You know I can call your P.O. and get you violated, right?" (**Allegation F**).

After Sgt. Farrell and Det. Gresko completed their search of the apartment, they entered the kitchen. § 87(2)(b) requested to see the arrest warrant, which Sgt. Farrell presented to him. The officers then left the apartment.

After the search, § 87(2)(b) found § 87(2)(b)'s laptop and cell phone on the floor, with the screen of each device cracked (**Allegation G**).

There is not video footage pertaining to this case.

This case went past the 90-day benchmark due to delays in officer scheduling.

### Mediation, Civil and Criminal Histories

- § 87(2)(b) rejected mediation.
- As of January 11, 2017, the Notice of Claim inquiry with the NYC Comptroller's Office is still pending.

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

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- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint filed by [§ 87(2)(b)] (Board Review 16).
- This is the third CCRB complaint filed by or on behalf of [§ 87(2)(b)] (Board Review 04). [§ 87(2)(b)]
- This is the first CCRB complaint filed by or on behalf of [§ 87(2)(b)] (Board Review 05).
- This is the first CCRB complaint filed by or on behalf of [§ 87(2)(b)] (Board Review 06).
- This is the fifth CCRB complaint filed against Sergeant Brian Farrell, who has a total of six allegations in his CCRB history and who has been a member of service for 16 years (see officer history). None of the allegations made against Sgt. Farrell were substantiated. [§ 87(2)(g)]
- This is the fourth CCRB complaint filed against Detective Matthew Murphy, who has a total of five allegations in his CCRB history and who has been a member of service for 14 years (see officer history). Of the five allegations in Det. Murphy's CCRB history that were fully investigated, none were substantiated [§ 87(2)(g)]
- This is the second CCRB complaint filed against Police Officer James Quirk, who has a total of one allegation in his CCRB history and who has been a member of series for five years (see officer history). The sole allegation against PO Quirk in CCRB case number 201507492 was a stop allegation that was exonerated.

### **Findings and Recommendations**

#### **Explanation of Subject Officer Identification**

- [§ 87(2)(b)] alleged that a black male officer said, "This is why we have guns, next time I will shoot" (Board Review 07). All of the officers interviewed regarding the incident stated that Sgt. Farrell, Det. Gresko, Det. Murphy, and PO Quirk, all of whom are white males, were the only officers present in the apartment. Additionally, the officers all held and confirmed that there was not a black male officer present in the apartment at any point during the incident under investigation. [§ 87(2)(g)]
- [§ 87(2)(b)] alleged that after the officers left the apartment, he went to the back of the apartment where the search was conducted and he found [§ 87(2)(b)]'s cellular phone and laptop on the floor in [§ 87(2)(b)]'s bedroom with the screen of each device cracked. [§ 87(2)(b)] stated that the property was not damaged prior to the incident, and [§ 87(2)(b)] confirmed that claim (Board Review 08). [§ 87(2)(b)] did not see how the property was damaged or who damaged the property and neither Sgt. Farrell nor Det. Gresko acknowledged damaging the property; [§ 87(2)(g)]
- [§ 87(2)(b)] alleged **Allegations E and F** against the officer who entered the apartment immediately after Sgt. Farrell, who walked him into the kitchen, and who stayed near [§ 87(2)(b)]

§ 87(2)(b) throughout the entirety of the incident. It is undisputed that Det. Murphy and PO Quirk were the two officers that stood near § 87(2)(b) at the front of the apartment during the incident. PO Quirk stated that he stood in close proximity to the door while Sgt. Farrell knocked on the door, and when he entered the apartment § 87(2)(b) was still standing in the initial hallway of the apartment. Additionally, PO Quirk stated that he walked § 87(2)(b) into the kitchen of the apartment (Board Review 09). Both Det. Murphy and Det. Gresko stated that PO Quirk stood next to Sgt. Farrell at the door of the apartment, and that PO Quirk entered immediately after Sgt. Farrell (Board Review 10) (Board Review 11). Det. Murphy stated that when he entered the apartment, § 87(2)(b) was already inside of the kitchen with PO Quirk. § 87(2)(g)

### **Allegations not pleaded**

- § 87(2)(g)
- § 87(2)(g)

### **Allegation A -Abuse: Sergeant Brian Farrell entered and searched § 87(2)(b) in Manhattan.**

It is undisputed that § 87(2)(b) is listed on multiple previous arrest reports as the primary address for § 87(2)(b)'s estranged brother, § 87(2)(b) including his most recent arrest on September 6, 2015 (Board Review 12) (Board Review 13). It is also undisputed that when § 87(2)(b) opened the door of the apartment, Sgt. Farrell asked him questions mainly about the whereabouts of § 87(2)(b) and if § 87(2)(b) was home at that time. It is undisputed that while speaking to the officers, § 87(2)(b) closed and locked the door. Finally, it is undisputed that § 87(2)(b) gave the officers permission to enter the home.

§ 87(2)(b) stated that while initially speaking to Sgt. Farrell at the door he was in his underpants and he did not have anything in his hands. § 87(2)(b) was only asked questions about whether or not § 87(2)(b) lived at the apartment and if he was at the apartment at that time. § 87(2)(b) then informed Sgt. Farrell that he did not know where § 87(2)(b) was, and that he had not seen him for an extended period of time. He was informed that there was an arrest warrant out in § 87(2)(b)'s name and he was briefly presented a piece of paper with § 87(2)(b)'s photo located at the bottom left corner of the paper. § 87(2)(b) requested to examine the paper, but Sgt. Farrell told him that he would be able to see it once again after the search for § 87(2)(b) was completed. Sgt. Farrell told § 87(2)(b) that the location was § 87(2)(b)'s known address. § 87(2)(b) then closed the door and locked it.

After, Sgt. Farrell told § 87(2)(b) that he had "10 seconds" to open the door. To which, § 87(2)(b) told Sgt. Farrell that he was the only person in the home at that time. § 87(2)(b) went to get his iPhone to call his mother, § 87(2)(b) via FaceTime so that "somebody could be a witness of what was going on." After informing her of what was occurring, § 87(2)(b)

advised § 87(2)(b) to open the door and let the officers in so that they do not damage the door. Two to three minutes after closing and locking the door, § 87(2)(b) opened the door for the officers.

§ 87(2)(b) observed Det. Gresko and Det. Murphy search the cabinets, refrigerator, dish washer, and the oven in the kitchen. After the officers left the incident location, § 87(2)(b) saw that all of the closets in the home were emptied and the contents were “thrown” onto the ground, the couch cushions were taken out, and two electronic devices belonging to § 87(2)(b) were damaged (see Allegation G below) (Board Review 07).

During a telephone statement, § 87(2)(b) stated that while she was on a FaceTime call with § 87(2)(b) she heard an officer, identified by the investigation as Sgt. Farrell, tell § 87(2)(b) that if he did not open the door, the officers would break the door down (Board Review 14).

§ 87(2)(b) then instructed § 87(2)(b) to open the door so that the officers do not break the door of § 87(2)(b)'s apartment.

Sgt. Farrell stated that the officers were at the location primarily to interview § 87(2)(b) about the whereabouts of § 87(2)(b) (Board Review 15). When § 87(2)(b) initially opened the door, he had a calm demeanor. Sgt. Farrell asked § 87(2)(b) if § 87(2)(b) was home, to which he responded that she was not. Sgt. Farrell later asked if § 87(2)(b) resided at the location and/or if he was inside of the apartment at that time. Sgt. Farrell observed that § 87(2)(b)'s demeanor changed; Sgt. Farrell stated that he appeared to be anxious as his eyes widened. § 87(2)(b) then closed the door on the officers. Up until that point, Sgt. Farrell did not have any discussion with § 87(2)(b) regarding the officers entering the apartment.

Sgt. Farrell listened through the door, and he heard noises that were consistent with an individual “running around” and doors being slammed shut. This led Sgt. Farrell to believe that § 87(2)(b) was possibly in the apartment. Sgt. Farrell commanded § 87(2)(b) to open the door, telling him that the officers would not be leaving the location without confirming § 87(2)(b) was not inside and that they would take the door if he did not open the door himself. Five minutes after closing the door, § 87(2)(b) opened the door and he gestured with his hand that the officers were allowed to enter.

During the search of the apartment, Sgt. Farrell looked in bedroom closets, the bathroom tub, the oven, the dishwasher, the refrigerator, underneath the beds, and all other locations where “a human being can hide.”

PO Quirk stated that the only indication that he saw, which lead him to believe that § 87(2)(b) was home was § 87(2)(b) closing the door in their faces (Board Review 09).

Det. Murphy stated that while standing at the door of Apt. 5G, Sgt. Farrell informed him that he “heard someone moving” in the apartment; however, he stated that this occurred prior to § 87(2)(b) opening the door the first time (Board Review 10).

Det. Gresko stated that after § 87(2)(b) closed the door shut, he and the other officers believed that § 87(2)(b) was inside of the apartment because they heard “noises” through the door. Det. Gresko was unable to detail what noises he heard (Board Review 11).

**Payton v. New York**, 445 U.S. 573 (1980). An arrest warrant founded on probable cause carries with it the limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within (Board Review 17).

In addition to the above referenced case law, see New York Criminal Procedure Law § 120.80, sub section 4 (Board Review 21), which states in order to effect an arrest, police may enter any premises in which he/she reasonably believes the defendant to be present.

**People v. Paige**, 77 A.D.3d 1193 (2010). The reasonable belief standard is less stringent than the probable cause standard, it is based on an assessment of the totality of circumstances and an officer's belief, if reasonable, need not be correct (Board Review 18).

§ 87(2)(g)

§ 87(2)(g)

**Allegation B -Abuse: Sergeant Brian Farrell interfered with § 87(2)(b)'s use of a recording device.**

**Allegation C -Abuse: Detective Matthew Murphy searched § 87(2)(b)'s recording device.**

§ 87(2)(b) stated he continued his call with his mother, § 87(2)(b) via FaceTime when he opened the door for the officers. Sgt. Farrell immediately said, "Stop the recording, he is filming. Cut the phone off." Sgt. Farrell then continued into the back of the apartment. PO Quirk entered immediately after, and he pulled § 87(2)(b) into the kitchen of the apartment. As PO Quirk did so, § 87(2)(b) placed his phone down in the kitchen without disconnecting the call. As § 87(2)(b) was being handcuffed by PO Quirk, Det. Murphy completely powered the phone off (Board Review 07).

During a phone statement, § 87(2)(b) stated that she did not witness any interactions between § 87(2)(b) and the officers. After § 87(2)(b) complied with her instructions to open the door, she only saw the ceiling of the apartment and she only heard "rumbling" (Board Review 14).

Sgt. Farrell stated that when he first entered he saw § 87(2)(b) standing in front of the door. § 87(2)(b) did not have any electronic devices in his hands and he was not filming. Sgt. Farrell did not say, "Stop the recording, he is filming. Cut the phone off." Sgt. Farrell did not turn a phone off and he did not see any other officer do so (Board Review 15).

PO Quirk stated that as he entered behind Sgt. Farrell, he did not hear him make any commands, but more specifically he did not hear Sgt. Farrell say, "Stop the recording, he is filming. Cut the phone off." PO Quirk observed § 87(2)(b) near the entrance to the apartment, but § 87(2)(b) was not holding any devices in his hands. § 87(2)(b) was not recording the interaction. PO Quirk did not see Det. Murphy or any other officer power a phone off in the kitchen of the apartment and he did not do so himself (Board Review 09).

Detective Murphy stated that upon entering the apartment, § 87(2)(b) was already in the kitchen. He did not enter the kitchen at any point. The entirety of the incident, Det. Murphy stood just outside of the kitchen in front of the entrance to the apartment. Det. Murphy did not power § 87(2)(b)'s phone off while he was inside of the apartment (Board Review 10).

§ 87(2)(g)

**Allegation D -Abuse: An officer threatened § 87(2)(b) with the use of force.**

§ 87(2)(g)

**Allegation E -Abuse: Police Officer James Quirk questioned § 87(2)(b)**

**Allegation F -Abuse: Police Officer James Quirk threatened to arrest § 87(2)(b)**

It is undisputed that PO Quirk stood near § 87(2)(b) throughout the entirety of the incident. § 87(2)(b) alleged that while in the kitchen of the apartment with PO Quirk, PO Quirk asked him if he was on probation or parole. § 87(2)(b) informed PO Quirk that he was on probation. Shortly after, PO Quirk said, “Tell me where § 87(2)(b) is.” § 87(2)(b) told him that he did not know where § 87(2)(b) was. PO Quirk responded by saying, “You know I can call your P.O. and get you violated, right?” PO Quirk was the only officer in the kitchen at that time (Board Review 07).

PO Quirk stated that he did not have any conversation with § 87(2)(b) while in the kitchen of the apartment. He did not ask § 87(2)(b) if he was on probation or parole and he did not say, “You know I can call your P.O. and get you violated, right?” (Board Review 09)

Det. Murphy stated that while he was standing in front of the entrance to the apartment he saw PO Quirk and § 87(2)(b) have a conversation. Det. Murphy did not hear the conversation and he did not learn later of what they conversed. He stated that he believed PO Quirk asked § 87(2)(b) about the subject of the warrant, but he was unable to confirm that because he could not hear (Board Review 10).

Both Sgt. Farrell and Det. Gresko were conducting the search for § 87(2)(b) in the back of the apartment when PO Quirk allegedly questioned and threatened to arrest § 87(2)(b) therefore, they were unable to hear the conversation in question (Board Review 15) (Board Review 11).

§ 87(2)(g)

**Allegation G -Abuse: Officers damaged § 87(2)(b) s property.**

§ 87(2)(g)

§ 87(4-b) § 87(2)(g)

Squad: 12

Investigator: \_\_\_\_\_  
Signature Print Date

Squad Leader: \_\_\_\_\_  
Title/Signature Print Date